

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

GLEN and DIANE MILLER,  
  
Debtor.

Case No. 04-72048  
Chapter 7  
Hon. Marci B. McIvor

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**OPINION GRANTING DEBTORS' MOTION FOR RECONSIDERATION AND  
ALLOWING DEBTORS' EXEMPTION OF PROWLER TRAILER UNDER § 522(d)(1)**

On June 7, 2005, this Court entered an Order Granting Trustee's Objections to Exemptions. On June 15, 2005, Debtors filed their Motion for Reconsideration of the June 7, 2005 Order pursuant to Local Rule 9024-1. For the reasons set forth below, the Court GRANTS Debtors' Motion for Reconsideration and vacates the Order entered on June 7, 2005.

I.

**STANDARD FOR MOTION FOR RECONSIDERATION**

Under Local Rule 9024-1, a motion for reconsideration should be granted if the movant demonstrates that the Court and the parties have been misled by a palpable defect *and* that a different disposition of the case must result from a correction of such palpable defect. A motion that merely presents the same issues already ruled upon by the Court, either expressly or by reasonable implication, shall not be granted.

II.

**FACTUAL BACKGROUND**

Debtors filed for bankruptcy on November 12, 2004. Debtors' filed their Schedules

on November 29, 2004. The Trustee held a 341 meeting in this case on January 20, 2005.

On February 18, 2005, the Trustee filed an objection to Debtors' exemptions, objecting to Debtors' exemption under § 522(d)(11)(E) for PA 116 Refunds on the grounds that those refunds are equivalent to tax refunds and are not properly exempt under § 522(d)(11)(E).

On March 11, 2005, Debtors filed an Amended Schedule B and an Amended Schedule C. The Amended Schedule B contained the following entry under

"33. Other personal property of any kind not already listed. Itemize.":

1993 29' Prowler Trailer useable as a residence at home place or on the road. Location: In debtor's possession

Amended Schedule C claimed an exemption for the PA 116 Refunds under § 522(d)(5) and claimed an exemption under § 522(d)(1) for the Prowler Trailer.<sup>1</sup>

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<sup>1</sup>Section 522(d)(1) provides that a debtor may exempt up to \$18,450 of the value of his residence as follows:

(d) The debtor's aggregate interest, not to exceed \$18,450 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

Section 522(d)(5) (known as the wildcard exemption) provides for an exemption of:

The debtor's aggregate interest in any property, not to exceed in value \$975 plus up to \$9,250 of any unused amount of the exemption provided under paragraph (1) of this subsection [ the homestead exemption].

Section 522(m) provides that the exemptions apply separately to each debtor in a joint case. Thus, joint debtors may double their federal exemptions under section 522. *In re Brooks*, 31 B.R. 302, 304 (Bankr. S.D.N.Y. 1983); *accord In re Szydlowski*, 186 B.R.907, 910 (Bankr. N.D. Ohio 1995) (joint debtors are each entitled to full exemption rights); *In re Williams*, 181 B.R. 298, 303 (Bankr. W.D. Mich. 1995) (debtors each can exempt up to \$8,000 for household furnishings). Thus, the husband and wife Debtors here have \$36,900

On April 7, 2005, the Trustee filed an objection to the amended exemptions that stated:

The Trustee objects to amended Schedule C for the reasons set forth in the initial objection [the classification of the PA 166 Refunds as exempt under § 522(d)(11)(E)]. If necessary, additional grounds for objection will be set forth at or prior to the May 3, 2005 hearing scheduled on this matter.

At the May 3, 2005 hearing, the Trustee essentially raised an objection as to the amount of Debtors' § 522(d)(5) exemption, arguing that the amount claimed as an exemption under § 522(d)(5) is too high, assuming that the exemption for the Prowler Trailer under § 522(d)(1) was a typographical error and should have been claimed under § 522(d)(5). (May 3, 2005 hg, Transcript, p. 2, line 18 through p. 3, line 21.) Debtors' counsel responded, claiming that this was the first time he heard the Trustee's objection to the amount claimed for the tax refunds and arguing that his calculations as to the amount claimed exempt by Debtors is correct. Debtors did not respond to the Trustee's assumption that the prowler trailer was mistakenly listed as a homestead under 11 U.S.C. § 522(d)(1). Since no party actually raised the issue of whether a 522(d)(1) exemption existed, the Court ruled that the issue was purely a "math issue" involving the proper valuation of property under 522(d)(5). In other words, the tax refund plus any other assets claimed as exempt under § 522(d)(5) could not exceed the \$20,450 allowable exemption amount under § 522(d)(5). The Court asked the parties to draft an order consistent with its ruling and submit it for signature.

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(\$18,450 x 2) available under the homestead exemption and/or \$20,450 (\$975 x 2 plus \$9,250 x 2) under the wildcard exemption.

Because the parties could not agree on the content of an order – specifically the proper treatment of the Prowler Trailer -- the Court held a hearing on both parties objections to each others' proposed orders on June 7, 2005. The Trustee argued that the Prowler Trailer is not properly classified as a homestead under § 522(d)(1). Debtors asserted that the issue of whether the Prowler Trailer is properly classified as a homestead under § 522(d)(1) was not raised in a timely manner and, therefore, cannot be heard, citing *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992). The Debtors contend that the Prowler Trailer is properly classified as a homestead under § 522(d)(1), and that Debtor is entitled to exempt the equity in the trailer.

The Court ruled from the bench, finding that the Trustee timely objected to the classification of the Prowler Trailer and that the Prowler Trailer is not properly exempted under § 522(d)(1). Accordingly, the Court found that the calculation of the § 522(d)(5) exemptions should include the \$4,000 exemption for the Prowler Trailer, leaving approximately a \$5,161 exemption for the PA 116 Refunds.

On June 15, 2005, Debtors filed their Motion for Reconsideration, again arguing that: (1) the Trustee's objection to the claimed exemption for the Prowler Trailer was not raised in a timely manner and, therefore, cannot be heard; and (2) even if the Trustee's objection were timely raised, the Prowler Trailer is properly exempt under § 522(d)(1).

### III.

#### ANALYSIS

Fed. R. Bankr. P 4003(b) requires that objections to exemptions must be filed within 30 days after the 341 meeting was held or within 30 days after any amendment to

the schedules is filed.<sup>2</sup> In this case, the exemption for the Prowler Trailer under § 522(d)(1) was first raised in Debtors' Amended Schedule C filed on March 11, 2005. The Trustee timely filed his written objections to the amended exemptions on April 6, 2005. However, the Trustee's objections to the amended exemption were limited to the classification of the 116 PA Refunds as exempt under § 522(d)(1)(E) (the reason set forth in his initial objection) and a catch-all clause allowing the Trustee to raise additional objections at the hearing scheduled for May 3, 2005. The Trustee did not specifically object to the exemption under § 522(d)(1) for the Prowler Trailer.

The issue before the court is whether the Trustee's failure to specifically object to the Debtors' exemption of the Prowler Trailer under 11 U.S.C. § 522(d)(1) precludes the Trustee from raising the objection at a later date. At the hearing on June 7, 2005, the Court found that statements made at other hearings and the pleadings taken as a whole were sufficient to put the Debtors on notice that the Trustee was objecting to the exemption of the Prowler Trailer under 522(d)(1). Upon closer review of all the pleadings filed in this case, the court concludes that this case is controlled by *Taylor v. Freeland & Kronz et. al.*, 503 U.S. 638 (1992) and the time constraints imposed by Bankruptcy Rule 4003. The

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<sup>2</sup>Fed. R. Bankr. P 4003(b) states:

(b) Objecting to a claim of exemptions

A party interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list of supplemental schedules is filed, whichever is later. . .

Trustee is barred from objecting to the Debtors' exemption of the Prowler Trailer under 522(d)(1).

In *Taylor v. Freeland*, the debtor claimed an exemption in proceeds from a lawsuit pending against her employer, TWA. The Trustee did not file an objection to the exemption within 30 days after the first meeting of creditors. When the debtor subsequently recovered \$110,000 from the suit, the trustee filed a complaint against the debtor claiming that the lawsuit proceeds were property of the estate. The debtor argued that the trustee's failure to file a timely objection to the exemption precluded the trustee from receiving the exempted assets for the benefit of the estate. The Court agreed, stating:

Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality. In this case, despite what respondents repeatedly told him, [the trustee] did not object to the claimed exemption. If [the trustee] did not know the value of the potential proceeds of the lawsuit, he could have sought a hearing on the issue, see Rule 4003(c), or he could have asked the Bankruptcy Court for an extension of time to object, see Rule 4003(b). Having done neither, [the trustee] cannot now seek to deprive Davis and respondents of the exemption.

*Taylor*, 503 U.S. at 644. The Court ruled against the trustee despite the fact that the parties agreed that the debtor had no legal basis for exempting more than a "small portion" of the proceeds. *Id.* at 642. While post-*Taylor* cases have narrowly distinguished its clear rule, see e.g. *In re Montanez*, 233 B.R. 791 (Bankr. E.D. Mich. 1999)(court can invoke its equitable authority under § 105 to consider untimely objection to exemption to prevent abuse of process), those cases do not further the Trustee's position on the facts before this Court.

In this case, Debtors' Amended Schedule B specifically stated that the Prowler

Trailer was useable as a residence. Amended Schedule C clearly exempted the trailer under § 522(d)(1). The Amended Schedules gave the Trustee notice of Debtors' intent to exempt the Prowler Trailer as a homestead. The Trustee did not timely object to the homestead exemption. Accordingly, the Trustee has waived his objection and Debtors' exemption of the Prowler Trailer under § 522(d)(1) is allowed.

The Trustee's belief that the exemption of the Prowler Trailer under § 522(d)(1) was a typographical error was reasonable in light of the schedules originally filed by Debtors-- schedules which listed as assets several different types of trailers. However, when Debtors filed amended schedules B and C, the Trustee had an obligation to raise specific objections to the exemptions as amended. General objections to exemptions the Trustee *assumed* Debtors were claiming are not sufficient. While the Trustee in this case has been quite diligent, the Code imposes upon him the burden of ensuring that a debtor's claimed exemptions are appropriate. Chapter 7 Trustees have both the knowledge and the motive to analyze and object to exemptions. If a Trustee fails to object in a prompt fashion, the exemptions claimed by a debtor, legitimate or not, become the allowed exemptions.

In this case, the Trustee's failure to specifically object to the exemption of the Prowler Trailer under § 522 (d)(1) gave the Debtor the mistaken impression that there was no issue as to exempting the trailer. While there has been no great delay in this case, had the parties not disagreed about the terms of the Order resolving the Trustee's objection to Debtors' exemptions, the issue would have arisen when the Trustee distributed assets and the Debtors asserted their right to an exempt amount at odds with the Trustee's proposed

distribution. It is critical that all objections to exemptions are clearly stated by the Trustee within the time limits imposed by 11 U.S.C. § 4003.

Because the Court finds that the Trustee's objection to the exemption of the Prowler Trailer under § 522(d)(1) was not timely, the exemption is allowed and the Court need not reach the question of whether a trailer is properly classified as a homestead under that section.

#### IV.

#### CONCLUSION

Because Debtors have demonstrated that the Court and the parties have been misled by a palpable defect *and* that a different disposition of the case must result from a correction of such palpable defect, Debtors' motion for reconsideration of this Court's June 7, 2005 order is GRANTED. Debtors' § 522(d)(1) exemption for the Prowler Trailer is allowed.

The Court will enter an Order allowing the following exemptions:

11 U.S.C. § (d)(1)	Prowler Trailer	\$4,000.00 <sup>3</sup>
11 U.S.C. § (d)(5)	Cash	10,624.51
	Checking account	112.84
	Sylvan boat and trailer	500.00
	Office equipment	50.00

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<sup>3</sup>\$36,900 available under (d)(1) less \$4,000 claimed leaves \$32,900 "unused" under (d)(1).



PA 116 tax refunds

9,162.65<sup>4</sup>

Dated: July 14, 2005  
Detroit, Michigan

/s/  
Marci B. McIvor  
United States Bankruptcy Judge

cc: Timothy J. Miller  
H. Dale Cubitt

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<sup>4</sup>Total (d)(5) exemptions equal \$20,450.